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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON  
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8 FRANCIS (FRANK) GARNER,  
9 PH.D,

10                   Plaintiff,

11                   v.

12 PACIFIC NORTHWEST  
13 NATIONAL LABORATORY  
14 (AKA BATTELLE MEMORIAL  
15 INSTITUTE, an Ohio Nonprofit  
16 Corporation) and CHARLES  
17 HENAGER,

18                   Defendants.

19                   NO. CV-09-5056-RHW

20                   **ORDER DENYING PLAINTIFF'S  
21 MOTION TO REMAND WITH  
22 LEAVE TO RENEW**

23                   Before the Court is Plaintiff's Motion to Remand (Ct. Rec. 3). The motion  
24 was heard without oral argument.

25                   On June 12, 2009, Plaintiff filed his complaint in Benton County Superior  
26 Court. Plaintiff is bringing state law claims for conversion and wrongful  
27 termination. In his complaint, he also alleged that Defendant Pacific Northwest  
28 National Laboratory (PNNL) terminated his family health care insurance plan  
without any notification, even though the plan was purchased for Plaintiff as a  
retiree, not a current employee. The premium was deducted from his pension and  
not funded by Defendant directly. Plaintiff alleged that he was incurred economic  
damage prior to the reinstatement after complaining about the wrongful  
termination of the insurance. Plaintiff also alleges that Defendant was deliberately  
and continuously unresponsive to inquiries by Plaintiff concerning his pension  
status.

**ORDER DENYING PLAINTIFF'S MOTION  
TO REMAND WITH LEAVE TO RENEW ~ 1**

1       Based on these allegations, Defendant Battelle Memorial Institute removed  
2 the action to the Eastern District of Washington. Plaintiff then filed a Motion to  
3 Remand to State Court. In his briefing, Plaintiff indicates that he is willing to file  
4 an amended complaint that deletes the allegations regarding the termination of the  
5 health care plan and complaints about the pension inquiries. Plaintiff filed a  
6 proposed amended complaint, but did not file a motion seeking leave of the Court  
7 to file the amended complaint. Rather, Plaintiff indicates that he intends to file the  
8 amended complaint in Superior Court, presumably after the Court remands the case  
9 back to state court.

10       When determining the existence of removal jurisdiction, the court must look  
11 to the complaint as of the time the removal petition was filed. *Abada v. Charles*  
12 *Schwab & Co., Inc.*, 300 F.3d 1112, 1117 (9<sup>th</sup> Cir. 2002). In this case, based on the  
13 allegations concerning the health care benefits and pension plan, there is federal  
14 subject matter jurisdiction and removal was proper.

15       Nevertheless, Plaintiff can amend his complaint to eliminate the federal  
16 claims. *See Baddie v. Berkeley Farms, Inc.*, 64 F.3d 487, 490-91 (9<sup>th</sup> Cir. 1995). If  
17 and when Plaintiff files his amended complaint, the Court can make the  
18 determination as to whether it will exercise its supplemental jurisdiction to hear the  
19 remaining state claim. *See Gilmore v. Bank of New York*, 2009 WL 2031736 (S.D.  
20 Cal. July 9, 2009).

21       Accordingly, **IT IS HEREBY ORDERED:**

22       1. Plaintiff's Motion to Remand (Ct. Rec. 3) is **DENIED**, with leave to  
23 renew.

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**ORDER DENYING PLAINTIFF'S MOTION  
TO REMAND WITH LEAVE TO RENEW ~ 2**

1           **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
2 Order and forward copies to counsel.

**DATED** this 11<sup>th</sup> day of September, 2009.

s/Robert H. Whaley

**ROBERT H. WHALEY**  
United States District Judge

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**ORDER DENYING PLAINTIFF'S MOTION  
TO REMAND WITH LEAVE TO RENEW ~ 3**